

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)
CELSIUS NETWORK LLC, et al.,¹) Chapter 11
Debtors.) Case No. 22-10964 (MG)
) (Jointly Administered)
)

JOINDER

Now comes the Vermont Department of Financial Regulation (Vermont), through counsel, pursuant to FRCP Rule 20 and joins in the Motion of the United States Trustee pursuant to 11 U.S.C. § 1104(c) for the appointment of an examiner in the above-captioned Chapter 11 cases. In support of this joinder, Vermont states as follows:

INTRODUCTION

1. The above-captioned Celsius debtors commenced these bankruptcy cases by filing voluntary Chapter 11 petitions on July 13, 2022 (Petition Date).
2. Debtors continue to operate their businesses as Debtors in possession pursuant to 11 U.S.C. §§ 1107 and 1108. No trustee or examiner has been appointed to date. The cases are being jointly administered pursuant to an Order of this Court dated July 19, 2022, DE # 53.
3. Debtors have not yet filed their schedules and statements.
4. On August 19, 2022, the first meeting of creditors was commenced pursuant to 11 U.S.C. § 341 (the 341 meeting).
5. On August 18, 2022, the United States Trustee filed a Motion for Entry of an Order Directing the Appointment of an Examiner (the Examiner Motion). Vermont concurs with the concerns raised by the United States Trustee, including the list of specific questions raised on

¹ Debtors include Celsius Network LLC, Celsius KeyFi LLC, Celsius Lending LLC, Celsius Mining LLC, Celsius Network Limited, Celsius Networks Lending LLC, and Celsius U.S. Holding LLC. The Debtor's principal place of business is 121 River Street, PH05, Hoboken, New Jersey 07030.

page 21 of the Examiner Motion, but wishes to highlight additional concerns raised to date during the course of a multistate investigation by state securities regulators.

6. The appointment of an Examiner is both in the best interests of creditors, within the meaning of 11 U.S.C. § 1104(c)(1), and mandatory pursuant to 11 U.S.C § 1104(c)(2).

THE REGULATORY INVESTIGATION AND STATE CONCERNS ABOUT UNREGISTERED SECURITIES OFFERINGS AND FRAUD

7. As of the Petition Date, at least 40 state securities regulators were engaged in a multistate investigation arising from, *inter alia*, concerns about potential unregistered securities activity, mismanagement, securities fraud, and market manipulation by Celsius and its principals. As noted by the United States Trustee, at least six of those states had taken regulatory enforcement action against Celsius as of the Petition date, and several more states done so since then.²

8. At a minimum, Celsius has been operating its business in violation of state securities laws. That improper practice alone warrants investigation by a neutral party.

9. Vermont and other state regulators are especially concerned about losses suffered by retail investors; for example, middle-class, unaccredited investors who may have invested entire college funds or retirement accounts with Celsius. The appointment of an Examiner is critical to ensure the interests of these investors are protected.

10. During the course of the multistate investigation, it has become clear that Celsius, through its CEO Alex Mashinsky and otherwise, made false and misleading claims to investors about, *inter alia*, the company's financial health and its compliance with securities laws, both of which likely induced retail investors to invest in Celsius or to leave their investments in Celsius despite concerns about the volatility of the cryptocurrency market. These claims included, at a minimum,³

A. Representations as to the company's ability to meet its obligations and to safeguard customer assets, when in fact Celsius lacked sufficient assets to repay its obligations at the time such statements were made. For example:

² On August 12, 2022, Vermont issued an *ex parte* order directing Celsius to cease and desist the offer and sale of Celsius Earn Accounts to Vermont residents.

³ Several investor letters to the Court since the Petition Date have identified specific misrepresentations made to investors during various "Ask Mashinsky Anything" or "AMA" sessions presented on YouTube.

- a. On June 7, 2022, Celsius published a blog post stating: “Celsius has the reserves (and more than enough ETH) to meet obligations, as dictated by our comprehensive liquidity risk management framework.”⁴ Preliminary internal financial records provided by Celsius to members of the multistate regulator group show that Celsius had a deeply negative net worth on June 7, 2022, lacked sufficient assets to repay its obligations to depositors and other creditors, and had ETH-denominated liabilities in excess of its ETH-denominated assets. *Declaration of Ethan McLaughlin at ¶ 4 and 6c.*
- b. On May 11, 2022, CEO Alex Mashinsky tweeted:



Alex Mashinsky  @Mashinsky · May 11
Notwithstanding the extreme market volatility, Celsius has not experienced any significant losses and all funds are safe.

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Preliminary internal financial records provided by Celsius to members of the multistate regulator group show that Celsius experienced unrealized losses of approximately \$454,074,042 between May 2 and May 12, 2022. The company was insolvent and depositor funds were not safe. *Declaration of Ethan McLaughlin at ¶ 4 and 6d.*

- B. Statements that Celsius was profitable or financially healthy when Celsius experienced catastrophic losses in 2021 and failed to earn sufficient revenue to support returns to Earn Account investors. For example:
 - a. On July 31, 2021, CEO Alex Mashinsky tweeted:

⁴ Celsius, *Damn the Torpedoes, Full Speed Ahead*, MEDIUM (June 7, 2022), celsiusnetwork.medium.com/damn-the-torpedoes-full-speed-ahead-4123847832af.



Alex Mashinsky

@Mashinsky

...

The other guys need to raise money every few months because they subsidize their already low rates and make al their income from fees.

So Celsius is profitable and always act in its users best interest while Blockfi has hidden fees and charges you comissions on every move.

4:08 PM · Jul 31, 2021 · Twitter Web App

30 Retweets 3 Quote Tweets 427 Likes

In fact, preliminary analysis of financial records provided to the multistate regulators group indicates that Celsius experienced massive losses in the first seven months of 2021. It also experienced two material adverse events in June and July of 2021.⁵ *Declaration of Ethan McLaughlin* at ¶ 6e.

C. Representations as to Celsius' compliance with applicable laws and regulations, when Celsius was actually subject to several pending actions and investigations by regulators for violating securities laws. In an interview with KitCo news on December 3, 2021, for example, CEO Alex Mashinsky was asked to respond to a hypothetical person saying Celsius sounded like a scam. Mashinsky replied, “[S]tates and other regulators have looked into Celsius. They came back: ‘thumbs up, there’s no problem. We did not find anything...’ And we just raised 750 million dollar round. So, our investors, they dug all the way in [and]made sure everything is kosher—no problems.” Kitco News, *This is when Bitcoin will hit \$140k, according to Alex Mashinsky, CEO of Celsius*, YouTube (December 3, 2021).⁶

11. During the 341 meeting, Celsius admitted, through its CFO Chris Ferraro, that the company's insolvency started with financial losses in 2020 and through 2021, belying the claims

⁵ See Declaration of Alex Mashinsky, DE #23, ¶ 93; StakeHound announced it had “misplaced the keys” to 35,000 Ether, or about \$87.77 million as of July 31, 2021, and in July 2021, a lender to Celsius was unable to return collateral, resulting in a \$509 million uncollateralized claim.

⁶ In fact, Celsius only raised \$600 million. See Declaration of Alex Mashinsky, DE# 23 at 92

in Celsius’s “First Day” declarations that the company’s insolvency stemmed from the fall of the crypto market during Spring 2022 and the related “run on the bank,” and further demonstrating the falsity of Celsius’s representations to investors. State and federal securities laws required Celsius to publicly disclose financial statements and a range of material information about its financial condition, business, and risk factors. Instead, Celsius and its management kept its massive losses, asset deficit, and deteriorating financial condition secret from investors.

12. Celsius also admitted at the 341 meeting that the company had never earned enough revenue to support the yields being paid to investors. This shows a high level of financial mismanagement and also suggests that at least at some points in time, yields to existing investors were probably being paid with the assets of new investors.

13. Credible claims have been asserted publicly, through letters to this Court and otherwise, that Celsius and its management engaged in the improper manipulation of the price of the CEL token, including by using the proceeds of investor deposits to acquire CEL tokens and increase its Net Position in CEL.⁷

14. Preliminary analysis of financial data provided by Celsius to members of the multistate regulator group is consistent with these claims.

- A. From May 24, 2021 to December 14, 2021, Celsius increased its Net Position in CEL by 41,955,119 CEL tokens, when the market price of CEL generally ranged between \$3.86 and \$8.00. *Declaration of Ethan McLaughlin at ¶ 6f.*
- B. From May 2, 2022 through July 1, 2022, Celsius increased its Net Position in CEL by an additional 40,089,731.33 CEL tokens, with over half of this increase occurring after Celsius froze withdrawals on June 12, 2022. The market price of CEL generally ranged between \$0.155 and \$2.077 during this period. *Declaration of Ethan McLaughlin at ¶ 6g.*
- C. Celsius has not provided the multistate regulator group with sufficient information to determine whether Celsius purchased CEL tokens or otherwise increased its Net Position in CEL during periods prior to May 14, 2021. *Declaration of Ethan McLaughlin at ¶ 7.*

⁷ “Net Position in CEL” refers to the total number of CEL tokens and CEL-denominated assets held by Celsius, minus CEL-denominated liabilities, such as CEL owed to depositors and CEL held as collateral owed to borrowers. For example, if the Company held 200 CEL tokens but owed 50 CEL tokens to Earn account depositors, its Net Position in CEL would be 150 CEL tokens.

15. The increase in Celsius's Net Position in CEL was in addition to the tens of millions of CEL tokens that Celsius purchased and paid out to depositors as interest.

Declaration of Ethan McLaughlin at ¶ 9.

16. By increasing its Net Position in CEL by hundreds of millions of dollars, Celsius increased and propped up the market price of CEL, thereby artificially inflating the company's CEL holdings on its balance sheet and financial statements. Excluding the Company's Net Position in CEL, liabilities would have exceeded its assets since at least February 28, 2019. These practices may also have enriched Celsius insiders, at the expense of retail investors.

Declaration of Ethan McLaughlin at ¶ 6.

17. By increasing its Net Position in CEL, Celsius invested depositor assets in a long position in CEL that was inconsistent with its purported "market neutral" investment strategy.

18. During the 341 meeting, Celsius admitted, through its CFO Chris Ferraro, that the decline in the price of CEL contributed to its insolvency.

19. An Examiner should investigate whether Celsius improperly deployed assets to manipulate the market price of CEL, thereby artificially inflating the value of the company's net position in CEL on its balance sheet and financial statements.

20. An Examiner should investigate whether or not the company's actions and practices improperly enriched Celsius insiders and other holders of CEL tokens at the expense of retail investors in Earn accounts.

CONCLUSION

For all of the reasons stated herein and in the Examiner Motion, Vermont respectfully requests that an Examiner be appointed with broad powers to investigate the Debtors and their financial affairs.

Dated: September 7, 2022

Vermont Department of Financial Regulation

By: /s/ Jennifer Rood
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